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No. 88-2035

In The

Supreme Court of the United States

October Term, 1989

ADAMS FRUIT COMPANY, INC., a Florida Corporation,

Petitioners,

v.

RAMSFORD BARRETT, DAVID SAPP, EDWARD TYRELL, DARYL HAMILTON, GARFIELD HILL, JR., ANTHONY GILL, LYNVAL ALDRIDGE, SEMORE HAYLES, AUDLEY KIRLEW and WINSTON WARNER,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

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RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

The Respondents, Ramsford Barrett, et al., request that this Court deny the petition for writ of certiorari, seeking review of the Eleventh Circuit Court of Appeals opinion entered March 15, 1989, 867 F.2d 1305 (11th Cir. 1989).

STATEMENT OF THE CASE

This action was brought by 10 migrant farm workers who were involved in a serious van accident while being transported by their employer, Adams Fruit Company, Inc., in 1985. The farm workers brought an action pursuant to the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §1801 *et seq*. The parties settled the case in regard to all of the claims but the ones brought pursuant to the MSAWPA's automobile safety provisions, 29 U.S.C. §1841. On summary judgement, the District Court for the Middle District of Florida found that the workers' claims in regard to the automobile safety provisions were barred by the Florida Workers Compensation Statute's exclusivity provisions. *Barrett, et al., v. Adams Fruit Company, Inc.*, No. 86-1301-Civ-T-17 (M.D. Fla. Oct. 29, 1987). The workers appealed this decision to the Eleventh Circuit, which reversed and remanded the case. *Barrett v. Adams Fruit Company, Inc.*, 867 F.2d 1305 (11th Cir. 1989). The Eleventh Circuit held that the workers' private right of action under the MSAWPA is not barred by the exclusivity provision of Florida's workers compensation law. The Adams Fruit Company seeks a writ of certiorari to review the opinion below.

ARGUMENT IN SUPPORT OF DENYING THE WRIT

1. THERE IS NO WELL-DEVELOPED CONFLICT CREATED BY THE DECISIONS IN FOURTH AND ELEVENTH CIRCUIT COURTS OF APPEAL.

The petitioners assert that the Eleventh Circuit, in its opinion in *Barrett v. Adams Fruit Company, Inc.*, 867 F.2d

1305 (11th Cir. 1989) erroneously interpreted the legislative history of the MSAWPA, relied on the legislative history of a predecessor act, and wrongly rejected a valid Department of Labor regulation. The petitioners arguments flounder on both points.

After an exhaustive review of the legislative history of the MSAWPA and its predecessor, the Farm Labor Contractor Registration Act, the Eleventh Circuit, in *Barrett*, has held that 29 U.S.C. §1854 preempts the provision of the Florida Workers Compensation Law which states that Florida workers compensation benefits shall be the exclusive remedy when those benefits are available, §440.11 Florida Statutes (1987). The court held that the state workers compensation statute was preempted only to the extent that the state statute conflicts with the private right of action contained in the MSAWPA.

The Eleventh Circuit rejected the reasoning of the Fourth Circuit in *Roman v. Sunny Slope Farms, Inc.*, 817 F.2d 1116 (4th Cir. 1987) in reaching its decision. These two decisions are the only federal circuit court decisions construing the private right of action section of the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA), 29 U.S.C. §1854, with state workers compensation exclusivity provisions.

Although the cases present an apparent conflict, this conflict may never develop into a real conflict. The decision in *Roman v. Sunny Slope Farms, Inc.*, concerns a different provision of MSAWPA than the one giving rise to the *Barrett* case. In *Roman*, a migrant farmworker sued for injuries which he allegedly sustained after being sprayed by pesticides. The employment arrangement

required that the employer provide protective clothing and workers compensation coverage. Although MSAWPA does not contain a specific provision regarding pesticides, the farmworker argued that he and the employer had an agreement regarding protection from pesticides. A violation of the working arrangement is actionable under the MSAWPA. 29 U.S.C. §1822(c). In these circumstances the *Roman* court upheld the exclusive remedy provision of the workers compensation statute. The *Roman* case was decided on facts that bear little resemblance to the facts in *Barrett*.

In the Eleventh Circuit decision in *Barrett*, however, the section of the MSAWPA at issue, 29 U.S.C. §1841 (c). specifically regulates the transportation of farmworkers. Moreover, this section requires that employers of farmworkers purchase liability insurance, and states that the insurance requirement is met when state workers compensation insurance has been purchased. 29 U.S.C. §1841(c). It is important, as the Eleventh Circuit has stated, that without the private right of action, the automobile safety provisions would be nullified, since workers compensation coverage would protect the farmer against liability even when the farmer completely fails to follow safety requirements.

The two decisions that this Court is urged to consider do not constitute a fully developed conflict. This Court in *McLaughlin v. Richland Shoe Co.*, ___ U.S. ___, 108 S. Ct. 1677 (1988) reviewed the meaning of the term "willful" as used in the statute of limitations provision of Fair Labor Standards Act. When the conflict was decided by the Court, it was an issue that had been analyzed by various

courts, and the application of the two conflicting standards had been tested many times. *Id.* 108 S.Ct. 1680, n.1; 1681, n.11. This Court in the *Richland Shoe Co.* case, was able to make a reasoned decision in light of the tested application of both standards.

The *Fletes v. John I. Hass, Inc.*, case, which follows *Barrett*, may indicate the narrow scope of *Roman*. In *Fletes v. John I. Hass Inc.*, No. 89085-FR (D. Ore. June 2, 1989), as in the *Barrett* case, an action was brought after a farmworker injury that occurred while the farmworker was being transported to work. The District Court in *Fletes* held that the transportation safety requirements of the MSAWPA would be effectively unenforceable if the availability of workers compensation benefits barred an action for noncompliance with the transportation safety requirements. The decision in *Roman* may, in the future be limited to personal injury that is not the subject of specific legislation in the MSAWPA.

The respondent urges that this Court refrain from considering this case until the appellate courts have had a greater opportunity to develop these issues.

II. THE DECISIONS IN THE ELEVENTH CIRCUIT AND FOURTH CIRCUIT DO NOT CREATE AN EMERGENCY FOR FARMERS NOR A PROBLEM FOR THE COURTS

a. Farmers Are Not "Endangered" by *Barrett*

Petitioner argues that immediate review is warranted because 1) farmers are uncertain as to standards and their obligations under MSAWPA; 2) growers who purchase

workers compensation coverage may face additional liability. Neither of these complaints are valid, but to the extent that they exist at all, they stem from Petitioner's disagreement with *Barrett*, and not from any conflict among circuits.

Petitioner wrongly asserts that different rights and standards are created by giving full effect to the private right of action in MSAWPA. In all jurisdictions, employers covered by the MSAWPA are required to provide safe transportation to their workers as defined by the MSAWPA and its regulations. The employers' liability under MSAWPA is limited to circumstances in which the employer has failed to abide by the law's specific requirements.

The MSAWPA clearly requires agricultural employers to make vehicles safe for transportation of migrant farmworkers. 29 U.S.C. §1841; 29 C.F.R. §§500.100-105. These motor vehicle provisions require, *inter alia*, that vehicles used to transport farmworkers hold no more than their maximum capacity; that each occupant have a seat belt; and that all objects within the vehicle be securely fastened. *Id*. In addition, an employer who transports migrant farmworkers is required at a minimum to purchase liability insurance or to post a bond for equivalent protection. 29 U.S.C. §1841(b)(1)(C). This latter requirement is satisfied when the employer provides workers compensation coverage. Nowhere in the Act does Congress provide that workers compensation coverage will protect an agricultural employer from any further liability for any physical injuries caused by violations of the Act.

The petitioner also disingenuously argues that the MSAWPA liability insurance requirements were designed to protect the employer, and not the worker. This turns history on its head. The requirement of minimal insurance protection is for the protection of the farmworker in the case of an accident, and is not designed to inform agricultural employers how to best shield themselves from liability. In passing the MSAWPA, Congress referred to its predecessor act, the Farm Labor Contractor Registration Act, and the need for stronger protection of farmworkers. House Report 97-885, at 3, reprinted at 1982 *U.S. Code Cong. & Adm. News*, 4547, 4587. Among the chief concerns was that of transportation safety, and workers compensation benefits were criticized as being inadequate. *Hearings on Farm Labor Contractor Registration Act*, 95th Cong. 2d Sess., February 22-23, 1978 at page 132. These benefits were discussed in the context of a tragic accident, in which 19 of 47 farmworkers being transported were killed. *Id*. The private right of action provision of the MSAWPA, as noted by the Eleventh Circuit, has been central to the enforcement of the safety provisions.

The insurance provision requirement was passed by Congress with no debate. There is no support either in the Act itself or in the legislative history for the proposition that the insurance requirement was designed to instruct private employers how to best shield themselves from liability. In fact, an attempt to amend the Farm Labor Contractor Registration Act to state that workers

compensation would be the exclusive remedy was flatly rejected by Congress.[1]

The issue is not whether the MSAWPA directs farmers properly on how to purchase insurance, as the petitioners urge this Court. The MSAWPA clearly instructs agricultural employers to meet its safety requirements, and allows workers a private cause of action if the employer fails to do so.

b. The Conflict Between The Circuits Is Not One Conducive To Forum-Shopping By Parties.

Agricultural employers, cannot, because of the unique nature of their business, move their industry from one area to another in order to secure a more favorable jurisdiction in regard to litigation. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

The apparent conflict here would not subject courts to the problems that occur when large corporations, conducting business in various jurisdictions, are amenable to suit in various locations. In the *Barrett* case, the farmworkers were all Florida residents, employed by a Florida employer, litigating in regard to an accident that occurred in Florida. Similarly, in *Roman*, a farmworker was working in South Carolina, for a South Carolina grower, when

[1] H.R. 10631, 95th Congress, 2d Sess., *reprinted in Farm Labor Contractor Registration Act. Hearings on H.R. 8232, H.R. 8233, H.R. 8234, H.R. 8249, H.R. 8894, H.R. 10053, H.R. 10631, H.R. 10810, H.R. 10922. Before the Subcomm. on Economic Opportunity* of the Comm. in Educ. and Labor, 95th Cong. 2d Sess. 4 (1978).

he suffered injuries from pesticide poisoning in South Carolina. Finally, the *Fletes* case involves a farmworker employed in Oregon, by an employer doing business in Oregon, who was injured in a vehicle operated by the grower. These cases show that there is very little likelihood that these cases can be the subject of forum-shopping.

III. THE ELEVENTH CIRCUIT HAS PROPERLY CONSTRUED THE MSAWPA PRIVATE RIGHT OF ACTION PROVISION

Petitioner does not claim that the Eleventh Circuit misconstrued the plain language of the MSAWPA, nor could it. The MSAWPA does not explicitly state that workers compensation benefits are the exclusive remedy where available. Rather, petitioner argues that "the Eleventh Circuit ignored the intent of AWPA, focused instead on its repealed precursor, FLCRA, and misapplied FLCRA legislative history." Petitioner's brief, p. 12. This is simply false.

The Eleventh Circuit has carefully considered the underlying legislative history of the MSAWPA, its statutory scheme and congressional intent and held that the exclusivity provision of the Florida Workers Compensation law "is preempted because its stands as 'an obstacle to the accomplishment and execution of the full purposes and objectives of Congress' ". (citation omitted). *Barrett*, at p. 12a Petitioner's Appendix.

The Eleventh Circuit, in deciding *Barrett*, applied the standards used by this Court in *California Fed. Sav. and*

Loan Ass'n v. Guerra, 479 U.S. 272 (1987). That case outlines three ways in which a state statute may be preempted by a federal statute. *Id.* at 280-281. The Eleventh Circuit found no complete preemption of the Florida workers compensation statute intended by Congress in MSAWPA, because preemption was neither expressly required nor mandated by the statutory scheme. However, it held that the exclusivity provision was preempted because it frustrated the purpose of the Act.

The petitioners also falsely claim that the Eleventh Circuit decision conflicts with *DeCanas v. Bica*, 424 U.S. 351 (1976), a case which is directly on point. In fact, *DeCanas v. Bica* is consistent with the other Supremacy Clause cases cited by the Eleventh Circuit in deciding *Barrett*; any claim to the contrary is simply untrue. In *DeCanas v. Bica*, this Court held that the Immigration and Nationality Act did not preclude *all* state legislation regarding employment of aliens. *Id.* at 265. Similarly, the Eleventh Circuit held that the MSAWPA preempted the state workers compensation provision only to the extent it conflicted with MSAWPA's private right of action. *DeCanas v. Bica* when applied, does not indicate a different result in *Barrett*. The Eleventh Circuit in deciding *Barrett* has not misapplied or misconstrued preemption law.

Finally, the petitioner also asserts that the Eleventh Circuit's rejection of the Department of Labor regulation which provides for exclusivity of workers compensation benefits, 29 C.F.R. §500.122(b), renders the Court's decision defective. Again, the petitioner misleads this Court by stating that the Eleventh Circuit "chose to ignore" the "controlling and sensible directive" of *Japan Whaling*

Association v. American Cetaceen Society, ___ U.S. ___, 106 S. Ct. 2860 (1986). Petitioner's brief, p. 17. The Eleventh Circuit rejected the regulation because it conflicted with the intent of Congress and the purposes of the Act, citing *Immigration and Naturalization Service v. Cardoza-Fonseca*, 480 U.S. 421 (1987), and *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) in support of its conclusion. The Court's rejection of the regulation was well-founded in law, and is not an issue that merits reconsideration.

The Eleventh Circuit's reasoning in *Barrett* is well-grounded in pertinent decisions of this Court, and the analysis applied is sound and well-reasoned. For these reasons, this Court should not hear this case.

CONCLUSION

For these reasons, the petition for writ of certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit should be denied.

Respectfully Submitted,

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